

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 5, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1450-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2011CF150**

**IN COURT OF APPEALS  
DISTRICT II**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DERRIQUE A. BROWN,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Winnebago County: JOHN A. JORGENSEN, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Derrique Brown appeals from a judgment convicting him on his no contest plea of possessing cocaine with intent to deliver. On appeal, he challenges the circuit court's refusal to suppress the drugs found during what he alleges was an unreasonable probationary or supervision search.

We conclude that the search was reasonable and lawful, and we affirm the circuit court.

¶2 Brown was on extended supervision when his supervising agent received a telephone tip that there were drugs<sup>1</sup> in a Jeep that Brown used. At the hearing on Brown's motion to suppress this evidence, the agent testified that the tipster, whose name was known to the agent, described the Jeep by color and year and said that "in the past [Brown] kept his drugs in the center console by the shifter under the plastic piece." The tipster's call about Brown was the agent's first contact with the tipster. The agent testified that Brown's supervision rules allowed the agent to search any property under Brown's control.

¶3 In response to the tip, Brown's agent, accompanied by law enforcement officers, searched Brown's residence and the Jeep. Brown admitted that he used the Jeep, which was owned by a friend. The agent searched the Jeep herself and found drugs in the area mentioned by the tipster, underneath the leather cover of the Jeep's gear shift in the area of the center console. Thereafter, Brown confirmed to the agent that he kept drugs in this area and denied that there were other drugs in the Jeep. An envelope with Brown's address was found on the Jeep's back seat.

¶4 Brown testified at the suppression hearing that one of the accompanying officers, not the agent, found the drugs in the Jeep. Brown denied that the drugs in the Jeep belonged to him. Brown admitted that he used, but did

---

<sup>1</sup> The search located cocaine, Ecstasy tablets and tetrahydrocannabinols.

not own, the Jeep. The Jeep was parked outside Brown's residence; Brown lived alone.

¶5 In denying Brown's motion to suppress, the circuit court relied upon the agent's testimony for its findings and conclusions.<sup>2</sup> Based on the agent's credible testimony, the search was a probation and parole (or supervision) search, not a law enforcement search.<sup>3</sup> Brown's supervision rules authorized the agent to search the Jeep which was under Brown's control. The agent found the tip reliable and took law enforcement personnel with her to Brown's residence for supervision and security purposes. The agent properly and lawfully searched the Jeep and found the drugs. The court concluded that the search was reasonable and appropriate. Brown appeals.

¶6 On appeal, Brown argues that his agent did not have reasonable grounds to conduct a search because the tip was insufficient. The residence of a person on supervision may be searched without a warrant if the agent has reasonable grounds to believe that the person possesses contraband. *State v. Jones*, 2008 WI App 154, ¶9, 314 Wis. 2d 408, 762 N.W.2d 106.<sup>4</sup>

¶7 The circuit court's findings about the basis for the search and how it was conducted are not clearly erroneous based on this record. *Id.*, ¶11. Whether the grounds found by the circuit court constitute a reasonable search presents a

---

<sup>2</sup> This credibility determination was for the circuit court to make. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

<sup>3</sup> Brown does not contest the circuit court's determination that the search was a probationary or supervision search, not a law enforcement search.

<sup>4</sup> Brown concedes that the agent had authority to search the Jeep without a warrant if the agent had reasonable grounds to believe that the Jeep contained contraband.

question of constitutional fact that we determine independently of the circuit court. *Id.*, ¶17.

¶8 WISCONSIN ADMIN. CODE § DOC 328.21(7) (Dec. 2006) sets out factors to be considered by an agent assessing whether there are reasonable grounds to believe that an offender's residence or other property contains contraband. *Jones*, 314 Wis. 2d 408, ¶19. DOC 328.21(7) states:

REASONABLE GROUNDS. In deciding whether there are reasonable grounds to believe that an offender has used, possesses or is under the influence of an intoxicating substance, that an offender possesses contraband, that an offender's living quarters or property contain contraband or that an offender in violation of supervision is located at the offender's residence, a staff member shall consider any of the following [factors.]

Among the § DOC 328.21(7) factors the agent may consider are information provided by informants, the reliability of the informant and the informant's information, the offender's activity relating to whether the offender might possess contraband, and the staff member's experience with the offender.

¶9 Brown argues that the agent had to consider all of the factors set out in the administrative rule. We conclude that the agent must only consider those factors that are relevant to the case. *Jones*, 314 Wis. 2d 408, ¶19 (in discussing this rule, the court stated: "an agent may consider any of the following" factors); *cf. Trattles v. Trattles*, 126 Wis. 2d 219, 229, 376 N.W.2d 379 (Ct. App. 1985) (only relevant statutory factors need to be considered).

¶10 The agent considered the relevant factors. The agent knew the tipster's name, the tipster identified Brown, gave specific identifying details about the Jeep, and related that drugs may be found in a specific location in the Jeep based on the tipster's knowledge of where Brown had secreted drugs in the past.

The agent was able to infer that the tipster was more likely providing truthful information because self-identification creates a circumstance where a tipster can be held accountable for a false tip. *State v. Miller*, 2012 WI 61, ¶34, 341 Wis. 2d 307, 815 N.W.2d 349. Brown also had several prior convictions for possessing drugs with intent to deliver.<sup>5</sup> The agent had reasonable grounds to search the Jeep given the tipster's information and Brown's prior convictions.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

---

<sup>5</sup> When we review a suppression ruling, we are not limited to the record before the circuit court at the time of the hearing. See *State v. Begicevic*, 2004 WI App 57, ¶3 n.2, 270 Wis. 2d 675, 678 N.W.2d 293. Information produced before or after the hearing may be used to support the circuit court's ruling. *Id.*

